

CALIFORNIA STATE PERSONNEL BOARD

Date of Issue: July 9, 1993

MEMO TO: ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS

SUBJECT: Pre-Employment Medical Evaluation Subject to Proper Placement

The purpose of this memorandum is to clarify and redefine the responsibilities of the State Personnel Board (SPB) and that of departments in regard to the medical evaluation of applicants for employment.

The Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, and California statutes mandate that qualified people with disabilities will not be discriminated against on the basis of disability.

G.C. Section 18931 authorizes the State Personnel Board to evaluate the fitness of applicants. G.C. Section 19230(c) requires departments to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled applicant.

In those cases where a department employs medical staff, the fitness evaluation of applicants may be delegated, subject to oversight by the State Medical Officer. The fitness evaluation is performed by the State Medical Officer on behalf of departments to which authority has not been delegated.

The ADA

The ADA provides that if a job offer is withdrawn because of a medical condition, the employer must show that:

"... the reasons for the exclusion are job-related and consistent with business necessity, or the person is being excluded to avoid a 'direct threat' to health or safety; and that ... no reasonable accommodation was available that would enable this person to perform the essential job functions without a significant risk to health or safety, or that such accommodation would cause undue hardship." A Technical Assistance Manual on the Employment Provisions (Title 1) of the Americans with Disabilities Act, pp. VI-6, VI-7.

Direct Threat

With regard to "direct threat", the ADA requires employers to make an individual determination that such a threat exists:

" ... any determination of a direct threat to health or safety must be based on an individualized assessment of

objective and specific evidence about a particular individual's present ability to perform essential job functions ..." A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act, p. IV-7.

Physician's Role

Where authority has not been delegated, the State Medical Officer reviews Health Questionnaires, Physical Examination reports, and other information to evaluate fitness. When no medical limitations on the performance of job duties are identified, applicants are approved for hire.

Heretofore, the State Medical Officer has disqualified applicants whose medical condition, in his professional medical judgement, would represent either: (1) an imminent and substantial risk to their own health or safety, or (2) a significantly greater risk to the health or safety of others than would be the case if a person without the disability were to perform the job.

However, the ADA limits the doctor's role "... to advising the employer about an individual's functional abilities and limitations in relation to job functions, and about whether the individual meets the employer's health and safety requirements." A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act, p. VI-9.

Given the provisions of the ADA, the fact that departments are the actual employers and the tendency of courts to give great weight to the opinions of treating and examining physicians, we believe we must redefine the State Medical Officer's role. Applicants with medical limitations will no longer be disqualified, but will be cleared for employment, subject to proper placement:

Effective August 15, 1993, when physical or mental limitations are identified by the State Medical Officer, applicants will be medically approved subject to proper placement (STPP). The STPP designation requires departments to consider an applicant's individual limitations and to provide reasonable accommodation.

When a department, after considering the limitations of the individual applicant and the duties of the position, determines that no reasonable accommodation is possible, the department will be responsible for disqualifying the applicant.

Employer's Responsibility for Defense

Decisions to disqualify may result in the department defending the decision in an administrative appeal, and/or in a court of law where an appellant alleges that the decision violated State

and/or Federal laws pertaining to discrimination against, and reasonable accommodation of, individuals with disabilities. Therefore, decisions to disqualify may result in liability to the department if defense of the decision is unsuccessful. Consequently, it would be advisable for departments to seek advice of counsel on how best to present the department's defense.

In order to defend the disqualification of an individual for medical reasons, it is necessary for the department to ensure that the hearing record establishes:

1. the essential functions of the job, and
2. why this particular individual with the medical condition peculiar to him/her either: (a) cannot perform essential job functions, with or without reasonable accommodation, or (b) cannot do so without a "direct threat" to health or safety.

Essential Job Functions

In order to support the contention that a job function is essential, the department must demonstrate that: (1) employees in the position actually are required to perform the function, and (2) removing the function would fundamentally change the job.

Documentation that might help establish that a job function is essential could include an examination bulletin, class specification, job analysis or validation study, or management information reports that establish the frequency with which an activity such as making arrests or subduing suspects or inmates occurs. Other documentation may also be available to supplement oral testimony as to what job functions are essential.

EEOC regulations implementing the ADA provide guidance on identifying the essential functions of a job and list several types of evidence to be considered in determining whether a function is essential. See pp.11-13 through 11-18 of A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act.

Individualized Assessment

The hearing record also needs to establish clearly the facts and professional medical opinions regarding that individual's medical condition. Equally important is establishing a "bridge" between the person's medical condition, ability to perform essential functions and any attendant "direct threat" to health or safety.

The ADA requires an employer to meet very specific and stringent requirements to establish that a "direct threat" exists. For guidance, see pp. IV-9 through IV-15 of A technical Assistance Manual on the Employment Provisions (Title I) of the Americans

with Disabilities Act.

Documentation such as "incident" reports, data on work-related injuries, etc., may help establish the existence of a "direct threat". In addition, the State Medical Officer will continue to be available, upon request, to offer his professional medical opinion in appeal hearings regarding health and safety risks. Typically, his opinion is based upon and supported by medical records obtained from examining or treating physicians regarding an individual's medical condition. Nevertheless, departments also should give strong consideration to obtaining written testimony from a physician who actually has examined the appellant, because courts tend to give significant weight to medical opinions from examining and treating physicians. When obtaining such an opinion, it is important that the doctor is provided with a list of essential job tasks and/or environmental factors critical to the assessment of risk.

Reasonable Accommodation

Finally, the hearing record needs to show what accommodations were requested by the applicant, any alternative accommodations that were considered by the department and why they were rejected. An employer is not required to make a reasonable accommodation if it would constitute an "undue hardship":

"The concept of undue hardship includes any action that is unduly costly, extensive, substantial, disruptive, or that would fundamentally alter the nature or operation of the business." A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act, p.111-12.

The department needs to demonstrate on the hearing record how the reasonable accommodations considered were judged to meet this standard. See pp. 111-1 through 111-37 of the EEOC Technical Assistance Manual for guidance on the reasonable accommodation obligation of employers.

Often, the State Medical Officer can assist in the reasonable accommodation process not only by identifying limitations on an individual's ability to perform the essential job functions, but also by suggesting ways in which the restrictions might be accommodated.

Where to Obtain Assistance

The State Personnel Board provides training classes on reasonable accommodation and on the Americans with Disabilities Act. Information also can be obtained from the State of California Guide for implementing Reasonable Accommodation and the Equal Employment Opportunity Commission publication, A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act.

Questions regarding the medical evaluation process should be discussed with the State Medical Officer, Dr. Stephen G. Weyers, at (916) 653-0790. (CALNET 453-0790) or TDD (916) 653-1498.

Questions about State Personnel Board training courses should be directed to Arnelle Thompson at (916) 653-1050 (CALNET 453-1050) or TDD (916) 653-1498. For information about scheduling or enrollment, call Dema Pedretti at (916) 653-2085 (CALNET 453-2085) or TDD (916) 653-1498.

The Guide for implementing Reasonable Accommodation may be obtained from the Affirmative Action Program Unit of the State Personnel Board, MS 38, (916)653-1579 (CALNET 453-1579) or TDD (916) 653-1498.

A free copy of the EEOC's Technical Assistance Manual may be obtained by calling 1-800-669-EEOC.

While to date the services of the State Medical Officer have been available at no charge to departments, anticipated reductions in the State Personnel Board's budget are likely to require that we ask departments to reimburse us for some of those services in the future. We will communicate with departments as soon as we know the extent to which this may be necessary.

/s/
GLORIA HARMON
Executive Officer